

UNITED STATES OF AMERICA
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: AUTOMOTIVE PARTS
ANTITRUST LITIGATION

Master File No. 12-md-02311
Hon. Marianne O. Battani

FINAL APPROVAL OF SETTLEMENT

BEFORE THE HONORABLE MARIANNE O. BATTANI
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Wednesday, November 5, 2014

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— **II** **—**

3 || Wednesday November 5 2014

4 at about 11:01 a.m.

THE CASE MANAGER: Please rise.

9 The United States District Court for the Eastern
10 District of Michigan is now in session. All persons having
11 business therein draw near, give attention, you shall be
12 heard. God save these United States and this Honorable
13 Court. The Honorable Marianne O. Battani presiding.

14 You may be seated.

15 THE COURT: Good morning.

16 ATTORNEYS PRESENT: (Collectively) Good morning.

17 MR. VICTOR: Yes, hello.

18 THE COURT: If you can't hear please say so.

19 MR. VICTOR: I can hear perfectly. Thank you.

20 THE COURT: Good morning, again, Counsel. May I
21 have your appearances, please?

22 MR. VICTOR: This is Paul Victor for Winston &
23 Strawn for Nippon Seiki companies.

THE COURT: All right.

25 MR. VICTOR: Thank you, Your Honor, for permitting

1 me to do this by telephone.

2 THE COURT: Okay.

3 MR. FINK: Your Honor, David Fink on behalf of
4 direct-purchaser plaintiffs.

5 MR. KOHN: Good morning, Your Honor. Joseph Kohn
6 for direct-purchaser plaintiffs.

7 MR. HANSEL: Good morning, Your Honor. Greg Hansel
8 on behalf of the direct purchasers.

9 MR. KANNER: Good morning, Your Honor. Steve
10 Kanner on behalf of the direct purchasers.

11 MR. SPECTOR: Good morning, Your Honor.
12 Gene Spector on behalf of the direct purchasers.

13 MR. POWELL: Good morning, Your Honor.
14 Matthew Powell on behalf of the Nippon Seiki entities.

15 MR. KALDIS: Good morning, Your Honor.
16 Harlyn Kaldis on behalf of Denso Corporation and Denso
17 International America.

18 THE COURT: This is very interesting because
19 plaintiffs are on the wrong side, right?

20 MR. FINK: That's correct, Your Honor.

21 MR. HANSEL: Yes.

22 THE COURT: All right. Well, this case is
23 different. Mr. Powell, you're defendant, right? You look a
24 little lonesome. Mr. Kaldis, you don't want to sit at
25 counsel table?

1 MR. KALDIS: Sure.

2 THE COURT: All right. This is the date set for
3 the final approval of the proposed settlement with Nippon,
4 correct? Who is going to speak for the plaintiff?

5 MR. KOHN: I will, Your Honor.

6 THE COURT: Okay. Mr. Kohn?

7 MR. KOHN: May it please the Court, Joseph Kohn
8 from Kohn, Swift & Graf for the direct-purchaser plaintiffs.

9 Your Honor, on behalf of co-lead counsel and
10 Mr. Fink, liaison counsel, we are very pleased to be here
11 today on the final approval hearing of a settlement agreement
12 between the direct purchasers and Nippon Seiki Company
13 Limited, N.S. International Limited and New Sabina
14 Industries, Inc., all the Nippon entities, settlement
15 agreement dated April 3rd of this year.

16 We are here to request the Court to enter two
17 orders, the first being the stipulated form of final judgment
18 as to the Nippon entities, which would be a final dismissal
19 with prejudice of those entities from the direct purchaser
20 litigation, what we hope is the first of similar orders in
21 this broader litigation.

22 The second is an order that we had requested with
23 respect to the ability and the right to be able to withdraw a
24 portion of the settlement fund for future litigation expenses
25 related to the instrument panel cluster litigation.

1 For purposes of this record and more in the nature
2 of administerial points, I want to place on the record that
3 the Court entered an order on May 16th of this year granting
4 preliminary approval to this settlement authorizing the
5 notice to the class members and setting this hearing date.
6 We filed the appropriate certification that the notices had
7 been provided October 21st, which contained a declaration
8 from the claims administrator certifying that class notice
9 was mailed to over 200 entities that were identified by the
10 defendants as their customers, their purchasers of these
11 products. That was done on July 30th. The publication
12 occurred in the Automotive News on August 4th and in the
13 Wall Street Journal August 8th, all directed by your Court's
14 prior order.

15 I do have paper copies of the proposed orders
16 although I understand that they are also submitted
17 electronically but if the Court requires --

18 THE COURT: I have a copy of them here.

19 MR. KOHN: Okay.

20 THE COURT: Let me just be clear on this, so you
21 mailed to the individuals or companies that the defendant
22 identified?

23 MR. KOHN: Not only this settling defendant but the
24 other party defendants in this case, so they were all
25 required to produce those records. We do keep them

1 confidential vis-a-vis the other defendant companies, their
2 customers have some confidential basis so we don't generally
3 file that entire list of who was mailed but it is available
4 should the Court require.

5 THE COURT: Okay. And it was published and also I
6 looked at a website that you had?

7 MR. KOHN: Correct, there is also a website that
8 was created by the claims administrator.

9 THE COURT: How would people know about this
10 website, I'm just curious?

11 MR. KOHN: It is referenced in the printed notices
12 and people surf the web. The claims administrator advises
13 there are only 250 what they call individual hits to the IPC
14 settlement portion of the broader website that they have
15 created. We haven't sort of -- but so it did get a fair
16 amount of activity given the size of the class.

17 Your Honor, respectfully we do believe this is a
18 milestone in the case. As I say, this will be the first
19 final judgment of dismissal in this litigation. Your Honor
20 may think given the number of defendants and the different
21 plaintiff groups at this pace we'll be here in the year 2525
22 as that old pop song went, but we think the pace is
23 accelerating.

24 THE COURT: I hope so.

25 MR. KOHN: One of the factors we had cited in favor

1 of approval of the settlement with respect to the preliminary
2 approval motion is the notion of an icebreaker settlement,
3 and we think that has gone beyond the theoretical to the
4 actual. There is a hearing set in December for two
5 additional settlements with respect to the direct purchasers
6 and final approval, and we would hope that this has proven to
7 be an icebreaker and not as they say merely theoretical.

8 The standards for approval of a class settlement
9 were set forth in detail --

10 THE COURT: Before you go -- excuse me. Before you
11 go into those standards, there were two groups, you attached
12 a list, I believe basically they were Ford and Honda who
13 opted out of this class; is that correct?

14 MR. KOHN: Correct, and that was again pursuant to
15 the procedures agreed in the agreement. They were attached
16 to the proposed final judgment order indicating that they
17 have elected to remove themselves from this settlement, they
18 are not bound by the judgment but they don't share in the
19 proceeds or the benefits either.

20 THE COURT: And there has been no other individual
21 defendants, you have received no other letters or anything
22 indicating a desire to opt out or other questions or anything
23 like that?

24 MR. KOHN: Not at all, Your Honor, and that really
25 in the anticipation in terms of looking at the standards that

1 was one of the factors that I wanted to take some time to
2 highlight today, which is the reaction of the class --

3 THE COURT: Okay. You may proceed.

4 MR. KOHN: -- to a settlement.

5 And under Rule 23 approval of a settlement is not a
6 majority rule vote, it is not a plebiscite. Theoretically a
7 majority of the class members could oppose a settlement or
8 object to it and the Court might still determine that it is
9 fair and reasonable and adequate or vice versa, there could
10 be no objection and the Court could still determine that it
11 is not fair.

12 We believe this class is somewhat unique. It is a
13 highly-sophisticated class of purchasers, it includes some of
14 the largest corporations in the world. They have in-house
15 counsel, they have access to outside counsel, they have
16 access to antitrust specialists so that we really think this
17 factor weighs very heavily in favor of approval more so than
18 it would in a, quote, run of the mill kind of class action.

19 In some ways I would submit that factor subsumes a
20 number of the other factors, for example, looking at the risk
21 or duration of litigation. Well, those corporations, the
22 Chryslers, the GMs, the Mercedes, the Nissans, understand
23 risk of litigation, they understand how long it can take,
24 they understand whether they could pursue a claim separately
25 with respect to Nippon if they chose, and they analyzed this

1 and they made their decision to remain in the class.

2 The factor of experienced counsel negotiating at
3 arm's length, they could evaluate that factor. We have had a
4 great deal of discussion with a number of other counsel who
5 either are in-house or outside counsel for some of those
6 class members, and they were able to make that evaluation and
7 that judgment as to whether this was in the best interest of
8 the class and satisfied those kind of factors. They could
9 have voted with their feet, as it were, and brought their own
10 actions or filed an objection to the settlement had they
11 chosen. They certainly had the wherewithal and the ability
12 to understand the case and access to counsel who could have
13 made whatever arguments they might have chosen to.

14 Your Honor will recall that the hearing not in
15 instrument panel cluster but the wire harness, the first of
16 the Twombly motions, and I stepped to the podium with all of
17 my notes and all ready to go and prepared, and I think Your
18 Honor asked me the first question, which is could you tell us
19 who do you really represent, what is this direct purchaser
20 class? And I think I tried my best to answer at that point
21 but maybe now a couple years later we have sort of a
22 deliverable, it is not a theory, it is a fact. With this
23 final judgment -- proposed final judgment, should the Court
24 enter it, it is a final judgment as to all direct purchasers
25 other than the two opt-outs, other than Honda, which was

1 designated I think in the guilty pleas with the Government,
2 with Nippon, and Ford, which has carved its own pathway in
3 its litigation, but every other direct purchaser from the
4 smaller assemblers and entities to, as I say, the Chryslers,
5 GMs, Toyotas, Mercedes, et cetera, are bound by this judgment
6 and are in this proposed settlement class for purposes of
7 finality for these defendants.

8 We can also -- while the other settlements will be
9 appropriately information about the opt-outs and the other
10 settlements will be filed as we have here, we can give the
11 Court a preview that there are similar or maybe even better
12 results in terms of the opt out in the settlements that are
13 going to be heard in December as well, and those will be
14 filed soon under the schedule.

15 Your Honor, part of the final judgment order and
16 the approval process is that the Court grant final approval
17 to the settlement class or certification of the settlement
18 class that was preliminarily granted in May, and we would
19 request the Court to incorporate those findings that the
20 Court did make in May. We have set forth in our brief the
21 standards for class certification beginning page 18 of the
22 brief we filed in September, certainly the scrap metal being
23 a leading antitrust case in the 6th Circuit, the Packaged Ice
24 case we also cited from this district, in terms of the
25 finding that commonality exists in cases of horizontal price

1 fixing and the other 23(a) factors are also satisfied here.

2 So, Your Honor, we would request on behalf of all
3 the parties, the settling defendants as well as the
4 plaintiffs, that the Court approve the judgement in the form
5 that was agreed upon by the parties. And many courts approve
6 settlement on the basis of a judgment without writing a
7 further memorandum -- or some do, some do not, but it is
8 certainly appropriate that the settlements are simply
9 approved and put to bed by virtue of the final judgement
10 order.

11 With respect to the proposed order on the future
12 cost expenditures, we are also happy to report there were no
13 objections to that from any of these class members, the
14 larger, sophisticated ones that I talked about. We cited --

15 THE COURT: That is at the set amount as stated in
16 the order?

17 MR. KOHN: Yes, Your Honor, up to that would be a
18 cap, it may be less.

19 THE COURT: Right.

20 MR. KOHN: We did cite a number of cases beginning
21 at pages 16 and 17 of our brief from coast to coast, from
22 California to the New York isles, of courts that have
23 approved those sorts of procedures for payment of expenses.
24 Indeed, in some of the cases the court has approved that the
25 entire amount of an early settlement can be used to fund

1 litigation expenses; we have not done that here, we have
2 placed a cap that it would be no more than 20 percent of this
3 settlement amount. Again, there has been no objections from
4 any class members to that.

5 Again, if Your Honor has questions I would be happy
6 to answer, otherwise we would respectfully request approval
7 of the two orders as submitted, and I look forward to seeing
8 you in December.

9 THE COURT: Thank you, Mr. Kohn. Before I get to
10 defense, Mr. Kohn speaks for everybody? Is there anyone who
11 has any other comment?

12 MR. KANNER: No.

13 MR. SPECTOR: No.

14 THE COURT: Mr. Spector, you're sure?

15 MR. SPECTOR: Positive.

16 THE COURT: Okay. For defense, you're confusing me
17 on this here.

18 MR. POWELL: We have nothing to add, Your Honor.

19 THE COURT: Nothing to add. Okay. I'm just going
20 to highlight for purposes of the record some of the items
21 that have been put forth. I appreciate the notices that have
22 gone out, and this class has been defined as all persons or
23 entities excluding defendants, their officers, directors and
24 employees, as well as defendants' parents, predecessors,
25 successors, subsidiaries and affiliates who purchase

1 instrument panel clusters in the United States, its
2 territories and possessions, directly from any defendants,
3 including settling defendants, or from any of the parents,
4 predecessors, successors, subsidiaries or affiliates during
5 the period from January 2001 up to and including the date the
6 Court enters an order approving the proposed form and method
7 of dissemination of notice.

8 I do want to specifically indicate, if I can find
9 the order here, is that paragraph 8 in the order, I would
10 like to for the record put that forth that the Court's
11 certification, and this is agreed upon by the parties, that
12 the Court's certification of the settlement class as provided
13 herein is without prejudice to or waiver of the rights of any
14 of the defendants to contest certification of any other class
15 proposed in these coordinated actions, et cetera, so I just
16 want to highlight that for purposes of the record.

17 The terms of the settlement here, the Court finds
18 that Nippon Seiki will pay the money into an interest-bearing
19 account, and the Court notes that the settlement amount is
20 substantially larger than the fine that was paid in the
21 criminal matter in this. Of course, in exchange for the
22 settlement payment and cooperation, which is very important
23 here, the plaintiffs and other members of the settlement
24 class release the antitrust claims arising from the conduct
25 alleged in the complaints.

1 Okay. Under Rule 23(e) it requires the Court to,
2 of course, approve the proposed settlement. The settlement
3 must be fair, reasonable and adequate, and of course there
4 are any number of factors that go into that, and I would just
5 briefly touch on those factors.

6 The first factor being the likelihood of success.
7 Though plaintiffs are optimistic, of course, success is not
8 guaranteed in any action, and defendant pled guilty to a
9 shorter conspiracy period than what is in the settlement. I
10 would indicate that certainly defendant is represented by
11 competent counsel and I believe would be prepared to defend
12 through trial and appeal if necessary, but these risks are
13 weighed against the settlement amount of \$5.25 million and
14 was mentioned here this morning that this is valuable also as
15 an icebreaker and I do agree with that.

16 The complexity, expense and likely duration of
17 continued litigation, I can't even foresee the likely
18 duration of continued litigation. What did you mention, 2020
19 or --

20 MR. FINK: 2525, Your Honor.

21 THE COURT: 2525.

22 MR. FINK: I should note Mr. Kohn didn't note one
23 thing, if this trial goes through 2525 I just hope you will
24 still be presiding and we'll all be here with you.

25 THE COURT: Right, wouldn't that be nice? Okay.

1 But certainly it is complex, just by their nature antitrust
2 claims are complex, very expensive. I think we can see that
3 already by the amount of time and counsels' fees alone
4 without even considering the costs, the actual out-of-pocket
5 costs, that these types of cases require and that were spent,
6 in fact, in this case. So it certainly eliminates the
7 expense and delay with respect to a recovery from the
8 defendant.

9 The judgment of experienced counsel, I have said
10 this before and I just want to repeat, the Court is very
11 impressed with all counsel for both sides in this case and
12 truly relies on it, and I think given your -- each of
13 counsel's past experiences, which I don't have to go over,
14 and what they have showed the Court in this litigation tells
15 me that since they believe -- counsel believes a settlement
16 is fair and reasonable the Court has no reason to believe
17 that it is not.

18 I do like the other comment that was made today,
19 which I guess I really hadn't considered before, that the
20 defendants, and I'm sure the defendant here too, that they
21 have their own counsel and I imagine -- maybe I'm reaching
22 here, I don't know, but I think the counsel for these large
23 corporations must be very good counsel and that they not only
24 have their litigation counsel here but their own in-house
25 counsel to advise them.

1 The Court further notes that there has been no
2 objection raised by other class members as to the 20 percent
3 of the settlement fund for litigation expenses, and as to the
4 actual settlement there had been just two exclusions, which
5 we've mentioned today, there is a list attached to the
6 judgment, they are basically Honda and Ford and various
7 entities associated or part of Honda and Ford.

8 It's believed by the Court that the settlement
9 class counsel has extensive experience in class-action
10 antitrust cases and other complex cases and that this
11 settlement was negotiated at arm's length. And certainly the
12 other factor the Court has to consider of course is the
13 public interest, and it is I believe almost always in the
14 public's interest to resolve litigation with a positive known
15 outcome. So given the fact that these suits are notoriously
16 difficult and unpredictable, I think the public is well
17 served by the resolution of this matter.

18 Okay. The next thing I should comment on I think
19 the notice and was the notice proper, and the Court read the
20 notice, I know it was mailed, I asked a few questions about
21 that, and apparently everybody received it, there were some
22 duplicates. It is kind of unusual because here we had direct
23 mailings to people or entities that we know were involved in
24 this litigation, so along with the newspaper and the website
25 I think that notice was properly and clearly indicated.

1 As I indicated already, the 20 percent funds I will
2 approve. Oh, the settlement class, the settlement class I
3 think should be finally approved by this Court under Rule 23.
4 Certainly numerosity is an issue with 200, almost 300
5 individual plaintiffs who are all over the country. It
6 appears that given the number and the geographical
7 distribution that joinder is impracticable.

8 Commonality, as we have said before, in
9 anti-price-fixing conspiracy cases by their nature deal with
10 common, legal and factual issues about the existence, scope
11 and effect of the alleged conspiracy.

12 Typicality, to satisfy this claim so the
13 representative parties must be typical of the claims. Here
14 typicality is satisfied because the individual plaintiffs'
15 injuries arise from the same wrong that is allegedly injuring
16 the class as a whole in that they were all victims of the
17 same conspiracy.

18 Next, the adequacy of representation. The Court
19 looks at the representation by the individual plaintiffs and
20 also the representation by counsel, and here the
21 representative plaintiffs will fairly and adequately protect
22 the interest of the class because the individual plaintiffs
23 have the same interest as other class members. In addition,
24 class counsel is qualified, experienced and able to conduct
25 litigation.

1 In terms of whether the plaintiffs meet the
2 requirements -- additional requirements of 23(b) (3), that
3 class members demonstrate that common questions predominate
4 over questions affecting only individual members and class
5 resolution is superior. The claims involve a single global
6 conspiracy from which all proposed settlement class members'
7 injuries arise. Evidence shows a violation as to one
8 settlement class member is common to the class and will
9 provide the violation to all.

10 So finally a class action the Court believes is the
11 superior method to adjudicate these claims, and I believe all
12 of Rule 23 has been satisfied here, and that the class should
13 be finally certified, and the Court will so certify. The
14 Court will approve the proposed settlement and will sign the
15 order for the 20 percent or the \$1,050,000 for the expenses
16 incurred.

17 Although I do have one question here, Mr. Kohn,
18 when you were talking about the expenses you said for future
19 expenses, so these are going for the continued litigation of
20 this as opposed to past?

21 MR. KOHN: Right. We wanted to make it clear that
22 we were not purporting to draw down some of that money to
23 reimburse the money that counsel has already expended on the
24 IPC cases for the translations, for the filing of the
25 complaints, et cetera.

1 THE COURT: Okay.

2 MR. KOHN: Thank you.

3 THE COURT: All right. Anything else that the
4 court needs to do that I haven't done or mentioned?

5 (No response.)

6 THE COURT: Okay. Thank you. This is our first
7 final approval, wonderful. Thank you very much.

8 MR. VICTOR: Thank you.

9 MR. KANNER: We will see you on December 3rd for
10 two more.

11 THE COURT: Wonderful.

12 MR. KOHN: Do a balloon drop like we have on
13 election night.

14 (Proceedings concluded at 11:28 a.m.)

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1 CERTIFICATION
2

3 I, Robert L. Smith, Official Court Reporter of
4 the United States District Court, Eastern District of
5 Michigan, appointed pursuant to the provisions of Title 28,
6 United States Code, Section 753, do hereby certify that the
7 foregoing pages comprise a full, true and correct transcript
8 taken in the matter of Autmotive Parts Antitrust Litigation,
9 Case No. 12-02311, on Wednesday, November 5, 2014.

10
11
12 *s/Robert L. Smith*
13 Robert L. Smith, RPR, CSR 5098
14 Federal Official Court Reporter
15 United States District Court
16 Eastern District of Michigan

17 Date: 11/12/2014
18 Detroit, Michigan

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